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June 24, 1976

Mr. Stuart P. Howell, Jr.
Office of the Director of Mental Health
105 Pleasant Street
Concord, New Hampshire 03301

Dear Mr. Howell:

I have your letter dated June 11, 1976 asking about the extent of the authority which you may exercise. I think that a general answer could not be given which would be sound and helpful. From the fact that an Acting Director cannot be appointed in the absence of a Director of the Division of Mental Health it does not follow that all of the kinds of actions normally performed by the Director cannot be performed by anyone but a Director or properly appointed Acting Director. Therefore, I would not be unduly concerned about actions which you have taken in the past. I think it is only safe to say at this point that those particular statutory duties which may be performed only by a Director of Mental Health may not be performed by other people within the Division in the absence of a Director or statutorily appointed Acting Director. I am inclined to doubt that any emergency situation might arise such as that which led the Governor and Council to seek an advisory opinion from the New Hampshire Supreme Court with respect to powers of financial management within the Department following the resignation of Mr. Zeiller, but if an emergency should arise we will address the problem then and perhaps ask advice from the New Hampshire Supreme Court.

Your letter emphasizes the need to fill the position of Director of Mental Health, since the one thing that is clear is that the present statutory arrangement does not contemplate a long vacancy in this office.

Yours sincerely,

David H. Souter
Attorney General

DHS/bab
cc: Robert E. Whalen, Commissioner